

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

FILED BY 4 DC  
JUN 13 PM 4:09  
ROBERT R. DITOLIO  
CLERK OF U.S. DIST. CT  
W.D. OF TN-JACKSON

UNITED STATES OF AMERICA, )

Plaintiff, )

VS. )

No. 04-10085-T-An

ANTHONY VASSER, )

Defendant. )

---

ORDER GRANTING MOTION TO SUPPLEMENT RECORD

---

Defendant has submitted a request to supplement the record pursuant to Rule 10(e)(2)(B) of the Rules of Appellate Procedure. This rule provides for the correction or modification of the record on appeal.

If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

....

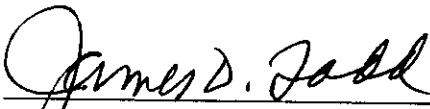
(B) by the district court before or after the record has been forwarded . . . .

Fed. R. App. P. 10(e)(2)(B). Rule 10(e) cannot be used to add to or enlarge the record on appeal to include material which was not before the district court. United States v. Garcia, 997 F.2d 1273, 1278 (9<sup>th</sup> Cir.1993); Borden, Inc. v. FTC, 495 F.2d 785, 787-88 (7<sup>th</sup> Cir. 1974); United States ex rel. Mulvaney v. Rush, 487 F.2d 684, 687 (3<sup>rd</sup> Cir. 1973); 16 *Fed. Prac. and Proc.* § 3956.

The supplement to the record submitted by Defendant is a document entitled "Defendant's Special Requests for Jury Instruction." This document was presented to the court on December 14, 2004, but was not made a part of the record. Because it appears that the document was omitted "by error or accident" as required by Fed. R. App. P. 10(e)(2)(B), and is not new evidence, see Schreier v. Weight Watchers Northeast Region, Inc., 872 F. Supp. 1, 3 (E.D.N.Y. 1994) ("The purpose of this rule is to correct omissions from--or misstatements in--the record on appeal, not to introduce new evidence in the court of appeals."), Defendant's motion to supplement the record is GRANTED.

The clerk is DIRECTED to file the document entitled "Defendant's Special Requests for Jury Instruction" which is attached to Defendant's motion to supplement the record and to forward this document to the Court of Appeals for inclusion in the record.

IT IS SO ORDERED.

  
\_\_\_\_\_  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE

13 June 2005  
DATE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 63 in case 1:04-CR-10085 was distributed by fax, mail, or direct printing on June 14, 2005 to the parties listed.

---

Richard Leigh Grinalds  
U.S. ATTORNEY'S OFFICE  
109 S. Highland Ave.  
Ste. 300  
Jackson, TN 38301

Jeff Mueller  
LAW OFFICES OF JEFF MUELLER  
P.O. Box 3146  
Jackson, TN 38303

Honorable James Todd  
US DISTRICT COURT